

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5056 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DECEASED MALEK KADAR MOHMAD     THROUGH HIS HEIRS

Versus

COLLECTOR OF BHARUCH

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Appearance:

Shri R.N. Shah for the petitioners.

Shri A.J. Desai, Asstt. Govt. Pleader for the respondents.

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 07/04/99

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ORAL JUDGEMENT :

The petitioners who were the heirs of Malek Kadar Mohmad, seek to challenge the order dated 30th June 1984, Annexure 'D' to the petition, which was made by the Collector, Bharuch, cancelling the NA permission which was granted by order dated 28.4.1982 and the order made by the Government on 28.10.1985, at Annexure 'E' to the petition, confirming the same.

2. The facts on record disclose that the predecessor of the petitioners had applied for and obtained NA permission for building a residential house on the lands in question. That order dated 28.4.1982, Annexure 'A' to the petition, discloses that permission was granted, inter alia, on the condition that construction was to be started and completed within the time specified in conditions nos.4 and 5. It appears that a show cause notice as per Annexure 'B' was issued on 28.5.1984 on Malek Kadar Mohmad Sayeed, calling upon him to explain as to why NA permission should not be cancelled since the construction was not started or completed within the period stipulated in the permission which was granted. The grievance of the petitioners is that Malek Kader was on his death bed and therefore, it was not possible for him to attend the hearing scheduled, which was to be held on 26th June 1984 pursuant to the said show cause notice. Unfortunately, Malek passed away on 30th June 1984. There is no dispute about this fact. However, since the officer concerned did not know this fact, on 30th June 1984, he recorded in the order that no one appeared in response to the show cause notice on 26.6.1984, and cancelled the permission which was earlier granted. In Appeal which was filed under sec.211 of the Bombay Land Revenue Code, the Government held that the show cause notice was received by Malek on 19.6.1984, i.e. sufficiently prior to 26.6.1984, when the matter was to be heard. It was held that a written request ought to have been made for extension of time. It was also held that since neither any intimation was given that the construction was started and completed within the stipulated time, nor was any extension sought, the order cancelling NA permission was justified and that there was no reason to interfere with it.

3. It has come on record that Malek Kadar was seriously ill when the show cause notice was sent to him and obviously he could not have, therefore, been able to attend the hearing on 26.6.1984, which was just about 4 days prior to his passing away. When the appellate authority was apprised of this fact and the death certificate was produced, the matter ought to have been viewed in the context of the fact that Malek Kadar was on his death -bed and he could not have approached the authority for extension of time. It is, therefore, clear that the order cancelling the NA permission could not have been sustained by the appellate authority once it was pointed out to it that the order was passed on the date on which Malek Kadar, in fact, died.

4. The impugned orders are, therefore, vitiated being contrary to the principles of natural justice and void. The impugned orders are, therefore, set aside. Rule is made absolute accordingly with no order as to costs.

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